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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/585,389	06/02/2000	Takeki Yazaki	NIT-200	5623
24956	7590	01/09/2006	EXAMINER	
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			LAZARO, DAVID R	
			ART UNIT	PAPER NUMBER
			2155	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/585,389

Applicant(s)

YAZAKI ET AL.

Examiner

David Lazaro

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-9 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-9 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This office action is in response to the RCE filed 11/03/05.
2. Claims 2, 3 and 10-20 are canceled.
3. Claims 1, 4-9 and 21 are pending in this office action.

### ***Response to Amendment/Arguments***

4. Applicants' arguments filed 11/03/05, with respect to the rejection of claims 1, 4-9 and 21 under 35 U.S.C. §103(a) as being unpatentable over Teraslinna in view of Kalkunte have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 4-9 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,147,970 by Troxel (Troxel).

7. With respect to Claim 1, Troxel teaches a bandwidth monitoring method suitable for use in a network, comprising the steps of:

transmitting a specific type of packets in preference to packets other than the specific type of packets (Col. 16 lines 43-55: high priority packets);

judging whether an inputted packet corresponds to the specific type of packets according to a value in a header of the packet (Col. 16 lines 43-55 and Col. 21 lines 10-15: priority may be based on the CLP (Cell Loss Priority) value in the header);

monitoring whether the specific type of packets violate a contract bandwidth under contract with a source of the specific type of packets (Col. 15 line 57 - Col. 16 line 5 and Col. 16 line 43 - Col. 17 line 22: policing of contract bandwidth is based on a token bucket method which includes a depth for high priority packets); and

when the packets of the specific type do not violate the contract bandwidth and the value in the header of the inputted packet does not correspond to a specific value indicative of the specific type of packets, transmitting the inputted packet after converting the packet to a packet having the specific value in its header (Col. 17 lines 11-34 and Col. 21 lines 10-15: priority upgrade outlet allows non-priority or low priority packets to be converted (changing the CLP value for example) to high priority when there is unused capacity related to the high priority packet (i.e. high priority packets have not violated the contract bandwidth)).

8. With respect to Claim 4, Troxel teaches all the limitations of Claim 1, wherein said header has a priority field and said judging as to whether the packets correspond to the specific type of packets is performed according to a value in the priority field (Col. 16

lines 43-55 and Col. 21 lines 10-15: priority may be based on the CLP (Cell Loss Priority) value in the header).

9. With respect to Claim 5, Troxel teaches all the limitations of Claim 1, wherein said monitoring is carried out by using a leaky bucket algorithm with a first depth of bucket when the packet does not correspond to the specific type of packets, and a leaky bucket algorithm with a second depth of bucket different from the first depth when the packet corresponds to the specific type of packets, thereby to judge whether or not said packet violates the contract bandwidth being under contract with the source of the packet (Col. 15 line 57 - Col. 16 line 5 and Col. 16 line 43 - Col. 17 line 22: The token bucket algorithm is a form of the leaky bucket algorithm. The policing of contract bandwidth in this token bucket method includes a depth for high priority packets and a depth for normal or low priority packets).

10. With respect to Claim 6, Troxel teaches A bandwidth monitoring method for use in a network, comprising the steps of:

transmitting a specific type of packets in preference to packets other than the specific type of packets (Col. 16 lines 43-55: high priority packets);

determining whether an inputted packet corresponds to the specific type of packets according to a value in a header of the packet (Col. 16 lines 43-55 and Col. 21 lines 10-15: priority may be based on the CLP (Cell Loss Priority) value in the header);

monitoring whether the specific type of packets violate a contract bandwidth under a contract with a source of the specific type of packets (Col. 15 line 57 - Col. 16

line 5 and Col. 16 line 43 - Col. 17 line 22: policing of contract bandwidth is based on a token bucket method which includes a depth for high priority packets); and

transmitting the inputted packet , when a bandwidth being used by the source of the packet of the specific type is less than or equal to a first bandwidth smaller than the contract bandwidth and the value in the header of the inputted packet does not correspond to a specific value indicative of the specific type of packets, after converting the packet to a packet having the specific value in its header (Col. 17 lines 11-34 and Col. 21 lines 10-15: priority upgrade outlet allows non-priority or low priority packets to be converted (changing the CLP value for example) to high priority when there is unused capacity related to the high priority packet (i.e. high priority packets have not violated the contract bandwidth)).

11. With respect to Claim 7, Troxel teaches all the limitations of Claim 6, and further teaches transmitting the packet as a packet other than the specific type of packets when the bandwidth being used by the source of the packet exceeds the first bandwidth and the packet does not correspond to the specific type of packets (Col. 16 line 43 - Col. 17 line 10).

12. With respect to Claim 8, Troxel teaches all the limitations of Claim 6, and further teaches transmitting the packet as a packet other than the specific type of packets when the bandwidth being used by the source of the packet exceeds the contract bandwidth and the packet corresponds to the specific type of packets (Col. 17 lines 6-10 and Col. 21 lines 25-28).

13. With respect to Claim 9, Troxel teaches all the limitations of Claim 6, wherein said monitoring method is carried out by using a leaky bucket algorithm with a first depth of bucket when the packet does not correspond to the specific type of packets, and a leaky bucket algorithm with a second depth of bucket when the packet corresponds to the specific type of packets, said first depth being different from said first depth, thereby to judge whether or not said packet violates the contract bandwidth being under contract with the source of the packet (Col. 15 line 57 - Col. 16 line 5 and Col. 16 line 43 - Col. 17 line 22: The token bucket algorithm is a form of the leaky bucket algorithm. The policing of contract bandwidth in this token bucket method includes a depth for high priority packets and a depth for normal or low priority packets).

14. With respect to Claim 21, Troxel teaches a bandwidth monitoring method suitable for use in a network, comprising the steps of:

judging whether an inputted packet is one of specific type of packets to be transmitted in preference to packets having a type other than the specific type, according to a value in a header of the inputted packet (Col. 16 lines 43-55 and Col. 21 lines 10-15: priority of packets may be based on the CLP (Cell Loss Priority) value in the header);

monitoring whether the specific type of packets violate a contract bandwidth under a contract with a source of the specific type of packets (Col. 15 line 57 - Col. 16 line 5 and Col. 16 line 43 - Col. 17 line 22: policing of contract bandwidth is based on a token bucket method which includes a depth for high priority packets); and

when the packets of the specific type do not violate the contract bandwidth and the value in the header of the inputted packet does not correspond to a specific value indicative of the specific type of packets, providing the specific value to the inputted packet and transmitting the inputted packet with the specific value in its header (Col. 17 lines 11-34 and Col. 21 lines 10-15: priority upgrade outlet allows non-priority or low priority packets to be converted (changing the CLP value for example) to high priority when there is unused capacity related to the high priority packet (i.e. high priority packets have not violated the contract bandwidth)).

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


16. U.S. Patent 6,381,214 by Prasad "Memory efficient leaky bucket policer for traffic management of asynchronous transfer mode data communications" April 30, 2002.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lazaro whose telephone number is 571-272-3986. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David Lazaro  
January 5, 2006

  
SALEH NAJJAR  
SUPERVISORY PATENT EXAMINER